

INSTRUCTIONS FOR COMPLETING BUSINESS ASSOCIATE AGREEMENT

First Page (page 1 of 3) BUSINESS ASSOCIATE AGREEMENT

1. Enter your organization's name in the space <<PROV>> in the title of the document.
2. In Section I - PURPOSE: Enter your organization's name in the space on the 2nd line directly before the words (Business Associate).

Last Page (page 3 of 3) BUSINESS ASSOCIATE AGREEMENT

In the lower right corner under BUSINESS ASSOCIATE:

1. Type your name in the space <<dir>>.
2. Type your title in the space <<title>>.
3. Type your organization's name in the space <<prov>>.
4. Sign and date the Business Associates Agreement

**HIPAA BUSINESS ASSOCIATE AGREEMENT
BETWEEN
SOUTH CAROLINA BUDGET AND CONTROL BOARD,
SOUTH CAROLINA DEPARTMENT OF DISABILITIES & SPECIAL NEEDS
AND
«PROV»**

I. PURPOSE:

The South Carolina Budget and Control Board, South Carolina Department of Disabilities and Special Needs (COVERED ENTITIES) and _____ (Business Associate) wish to enter in to this Agreement for the purpose of protecting the privacy of individually identifiable health information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) in performing the functions, activities, or services for, or on behalf of, COVERED ENTITY as specified in the agreement between the parties dated _____.

II. DEFINITIONS: (Terms used, but not defined shall have the same meaning as those terms in the HIPAA Privacy Rule.)

- a. Individual means the same as "individual" in 45 CFR §164.501 and includes a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- b. Privacy Rule means the HIPAA Standards for Privacy of Individually Identifiable Health Information (45 CFR Part 160 and Part 164, Subparts A and E).
- c. Protected Health Information, PHI means the same as “protected health information” in 45 CFR §164.501, limited to information created/received by BUSINESS ASSOCIATE from /on behalf of COVERED ENTITY.
- d. Required By Law means the same as "required by law" in 45 CFR §164.501, and other law applicable to the PHI disclosed pursuant to this Agreement.
- e. Secretary means the Secretary of the Department of Health and Human Services or designee.

III. BUSINESS ASSOCIATE AGREES TO:

- a. Not use or disclose PHI other than as permitted or required by the Agreement or as Required By Law.
- b. Use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.
- c. Mitigate to the extent practicable, any harmful effect known to BUSINESS ASSOCIATE if BUSINESS ASSOCIATE uses/disclosures PHI in violation of this Agreement.

- d. Report to COVERED ENTITY any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware.
- e. Ensure that any agent/subcontractor to whom it provides PHI agrees to the same restrictions/conditions that apply to the BUSINESS ASSOCIATE in this Agreement.
- f. If the BUSINESS ASSOCIATE has PHI in a Designated Record, provide access at the request of COVERED ENTITY, and in the time and manner designated by COVERED ENTITY, to PHI in a Designated Record Set, to COVERED ENTITY or, as directed by COVERED ENTITY, to an Individual in order to meet the requirements under 45 CFR §164.524.
- g. If the BUSINESS ASSOCIATE has PHI in a Designated Record Set, make any amendment(s) to PHI in a Designated Record Set that the COVERED ENTITY directs or agrees to pursuant to 45 CFR §164.526 at the request of COVERED ENTITY or an Individual, and in the time and manner designated by COVERED ENTITY.
- h. Make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by BUSINESS ASSOCIATE on behalf of, COVERED ENTITY available to the COVERED ENTITY, or at the request of the COVERED ENTITY to the Secretary, in a time and manner designated by the COVERED ENTITY or the Secretary, for purposes of the Secretary determining COVERED ENTITY's compliance with the Privacy Rule.
- i. Document such disclosures of PHI and information related to such disclosures as would be required for COVERED ENTITY to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.
- j. Provide to COVERED ENTITY or an Individual, in time and manner designated by COVERED ENTITY, information collected in accordance with Section III.i of this Agreement, to permit COVERED ENTITY to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.

IV. **PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE:**

- a. Except as limited in this Agreement, BUSINESS ASSOCIATE may use PHI to perform functions, activities, or services for, or on behalf of, COVERED ENTITY as specified in the agreement noted in I., provided that such use would not violate the Privacy Rule if done by COVERED ENTITY or the COVERED ENTITY's minimum necessary policies and procedures. Unless otherwise permitted in this Agreement, in the agreement noted in I. above or as Required by Law, BUSINESS ASSOCIATE may not disclose or re-disclose PHI except to COVERED ENTITY.
- b. Except as limited in this Agreement, BUSINESS ASSOCIATE may use or disclose PHI for the proper internal management and administration of the BUSINESS ASSOCIATE or to carry out the legal responsibilities of the Business

Associate, as needed for BUSINESS ASSOCIATE to provide services to COVERED ENTITY under the above noted agreement.

- c. Except as limited in this Agreement, BUSINESS ASSOCIATE may use PHI to provide Data Aggregation services to COVERED ENTITY as permitted by 42 CFR §164.504(e)(2)(i)(B).
- d. BUSINESS ASSOCIATE may use PHI to report violations of law to appropriate Federal and State authorities, consistent with §164.502(j)(1).

V. **COVERED ENTITY Shall:**

- a. Notify BUSINESS ASSOCIATE of any limitation(s) in its notice of privacy practices of COVERED ENTITY in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- b. Notify BUSINESS ASSOCIATE of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- c. Notify BUSINESS ASSOCIATE of any restriction to the use/disclosure of PHI that COVERED ENTITY has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate's use/disclosure of PHI.
- d. Not request BUSINESS ASSOCIATE to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by COVERED ENTITY.

VI. **TERM AND TERMINATION:**

- a. This Agreement is effective upon signing and shall terminate when all of the PHI provided by COVERED ENTITY to BUSINESS ASSOCIATE, or created or received by BUSINESS ASSOCIATE on behalf of COVERED ENTITY, is returned to COVERED ENTITY, or, if it is infeasible to return PHI, protections are extended to such PHI in accord with the termination provisions in this Section.
- b. Upon COVERED ENTITY's knowledge of a material breach by Business Associate, COVERED ENTITY shall:
 - 1. Provide an opportunity for BUSINESS ASSOCIATE to cure the breach or end the violation and terminate this Agreement and the above identified agreement if BUSINESS ASSOCIATE does not cure the breach or end the violation within the time specified by COVERED ENTITY; OR
 - 2. Immediately terminate this Agreement and the above identified agreement if BUSINESS ASSOCIATE has breached a material term of this Agreement and cure is not possible; OR
 - 3. If neither termination nor cure is feasible, COVERED ENTITY shall report the violation to the Secretary.

c. Effect of Termination

1. Except as provided in paragraph (2) below, upon termination of this Agreement, for any reason, BUSINESS ASSOCIATE shall return all PHI received from COVERED ENTITY, or created or received by BUSINESS ASSOCIATE on behalf of COVERED ENTITY. This provision applies to PHI in the possession of subcontractors or agents of Business Associate. BUSINESS ASSOCIATE shall retain no copies of the PHI.
2. In the event that BUSINESS ASSOCIATE determines that returning the PHI is infeasible, BUSINESS ASSOCIATE shall provide to COVERED ENTITY notification of the conditions that make return infeasible. Upon mutual agreement of the parties that return of PHI is infeasible, BUSINESS ASSOCIATE shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return infeasible, for so long as BUSINESS ASSOCIATE maintains such PHI.

VII. MISCELLANEOUS:

- a. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- b. The Parties agree to amend this Agreement as necessary to comply with HIPAA and other applicable law.
- c. The rights and obligations of BUSINESS ASSOCIATE under Section VI. c shall survive the termination of this Agreement.
- d. Any ambiguity in this Agreement shall be resolved to permit COVERED ENTITY to comply with the Privacy Rule.

COVERED ENTITIES

BUSINESS ASSOCIATE

Tom Waring, _____ Date
Associate State Director, Administration
SC Department of Disabilities & Special Needs

| | |
|---------|------|
| «dir» | Date |
| «title» | |
| «prov» | |